

## **JOINT AGENCY AGREEMENT**

### **NATURALLY OCCURRING ASBESTOS ORIGINATING FROM THE SUMAS MOUNTAIN LANDSLIDE IN WASHINGTON STATE**

#### **SITUATION**

Whatcom County, the Washington State Department of Ecology (Ecology) and Region 10 of the Environmental Protection Agency (EPA) acknowledge that asbestos contained in the sediments originating on Sumas Mountain, Washington occurs naturally and that deposition of this asbestos in and around Swift Creek and the Sumas River is likely to continue during the next several centuries. The agencies recognize that there is a measurable health risk to humans from long-term exposure to these sediments when they are dry, disturbed or inappropriately managed. The agencies also recognize the burden that recurring flooding places on the local community.

The agencies have concluded that engineered facilities to stop the erosion and deposition of Sumas Mountain sediments near their source are prohibitively costly and require resources far beyond those available to State and Local governments, and that Federal programs do not presently allow for spending of this magnitude.

In the absence of a clear and cost effective long-term solution, the agencies agree that along with communication with the public regarding ways to limit exposure, a 10- to 20-year interim containment strategy at Swift Creek is the best management alternative. The agencies understand that this approach will not prevent the spread of sediments via flooding beyond the banks of Swift Creek or the Sumas River; rather, the strategy reduces the area of potential deposition and reduces the amount of asbestos-containing sediment transported downstream over time. The interim strategy is intended to provide time to develop and implement a long-term plan to diminish the impact of ongoing deposition of asbestos-containing sediment in the Sumas River Basin.

The agencies agree to continue their work together toward management of the Sumas Mountain Naturally Occurring Asbestos. To be successful in this work, the agencies must provide certain commitments. These commitments, as they are presently understood, are listed below.

#### **COMMITMENTS**

##### **Whatcom County, Ecology, and EPA Agree to Immediately:**

- Explore and establish, consistent with agency authorities and resources, the appropriate legal structures for managing the problem. Options the agencies are likely to explore include, but are not limited to: enforcement discretion, emergency permitting, limited liability corporation options and protections for those implementing agreed-upon plans.
- Develop an Interagency Response and Recovery Plan, a 10-20 year interim strategy and a long-term work plan for managing issues associated with the sediments originating from the Sumas Mountain landslide.
- Charter a Working Group to prepare and implement the plans and strategies listed above. The Working Group is not a legal entity with powers to enter into contracts, incur liabilities,



own or create intellectual property, or otherwise make legally binding commitments of the funds or other assets of the agencies.

- Encourage the Working Group to be both reasoned and innovative in their efforts. Encourage the Working Group to engage high-level leadership when policy decisions must be addressed.
- Acknowledge that the Army Corps of Engineers (Corps) has unique expertise and experience that is useful to this collaborative effort. Further acknowledge that Corps leadership has determined the Corps can only become actively involved when a permit is submitted for review, or when federal funding is made available for this project.
- Continue to engage the Army Corps of Engineers as much as practical and possible given their constraints.

**Whatcom County will:**

- Continue to provide project management and technical resources within existing County authorities for flood management, land-use and public health.
- Commit to the acquisition of lands and/or easements needed to implement the interim containment strategy, contingent on availability of adequate state and federal funding and satisfactory assurances regarding liability.
- Commit to examining and revising land use plans, zoning and development regulations as appropriate in the affected areas.
- Continue local funding at existing levels to help secure state and federal financial commitments.

**Ecology will:**

- Continue to provide technical assistance and staff resources.
- Commit to continue to actively seek funding at the state level, and at the national level by working with Washington's Congressional delegation.
- Commit to expediting decisions on any Ecology-issued permits and any needed regulatory interpretations that Ecology is responsible for, including expediting the resolution of any wetlands-related issues.
- Commit to advocate for and organize active participation by other state agencies such as the Department of Natural Resources, Labor and Industries, the Department of Health and the Department of Agriculture.

**EPA will:**

- Continue to provide technical assistance and staff resources.
- Commit to look for ways to access all available EPA funding sources and staff resources.

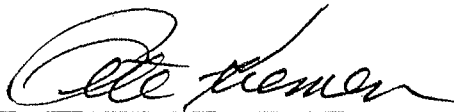
- Advocate for the participation of and collaborate with other relevant federal agencies, such as the Army Corps of Engineers and Federal Emergency Management Agency.

## RESERVATIONS

This agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against EPA, Ecology, or the County, their officers or employees, or any other person. This agreement does not direct or apply to any person outside of EPA, Ecology, or the County.

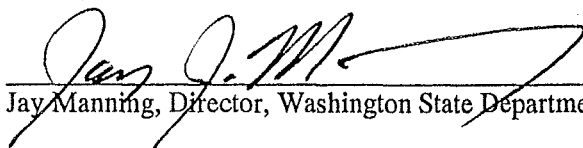
## EFFECT

This agreement is to take effect upon the signatures of the parties below and remain in effect for a period of 3 years. This agreement may be extended or modified, at any time per the mutual written consent of the parties. Additionally, a party may terminate its participation in this agreement at any time by providing written notice to the other parties, at least 30 days in advance of the desired termination date.



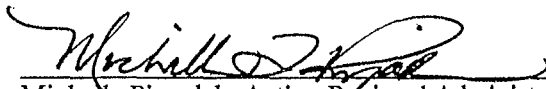
Pete Kremen, Executive, Whatcom County Washington

8-31-09  
Date



Jay Manning, Director, Washington State Department of Ecology

8/31/09  
Date



Michelle Pirzadeh, Acting Regional Administrator, Region 10 EPA

8/31/09  
Date

## Attendees

2009 Sumas Mountain/Swift Creek Leadership Meeting  
Seattle, Washington  
31 August 2009

### Whatcom County

Pete Kremen, Whatcom County Executive  
Jon Hutchings, Assistant Public Works Director\*  
Paul Pittman, River and Flood Division Geologist

### Ecology

Jay Manning, Director  
Richard Grout,\*  
Pete Kmet  
Mary O'Herron, Environmental Specialist

### EPA Region 10

Michelle Pirzadeh, Administrator  
Linda Anderson-Carnahan, Associate Director, Office of Environmental Cleanup\*  
Elly Hale  
Cliff Villa

### ACOE Seattle District

Mona Thomason, Chief, Planning Branch, Planning, Programs & Project  
Management Division\*  
Linda Smith, Chief, Plan Formulation, Planning Branch  
Randel Perry, Regulatory Branch, Operations Division

### Elected State Officials

Senator Dale Brandland  
Representative Kelli Linville

### Congressional Staff

Sally Hinz on behalf of Senator Cantwell  
Luke Loeffler on behalf of Congressman Larsen

\*principal agency contact for this meeting